

charged in the libel are false, then, of course, your verdict should be for the claimants, and you will find that the article has not been misbranded.

"Any suggestions, gentlemen, or any objections?"

Mr. PERRY: "No, your honor."

Mr. WOOD: "No, we have none."

THE COURT: "Forms of verdict have been prepared for your guidance. One form reads: 'We, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find for the libelant.' The libelant, you understand, is the Government.

"The other one: 'We, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find for the claimants, Mr. Johnson and Mr. Lee.'

"After you retire to your jury room, you will select one of your number to act as your foreman, and proceed with your deliberations. After you have agreed upon a verdict, you will have it signed by your foreman and returned to open court. Any verdict agreed upon must, as you know, be unanimous. Swear the bailiffs."

The jury, after deliberation, returned a verdict for the Government and on January 6, 1941, judgment was entered condemning the product and ordering that it be destroyed.

514. Misbranding of Elsaco Mineralized Water. U. S. v. 100 Bottles of Elsaco Mineralized Water. Default decree of condemnation and destruction. (F. D. C. No. 3602. Sample No. 32657-E.)

On January 2, 1941, the United States attorney for the District of Arizona filed a libel against the above-named product at Phoenix, Ariz., alleging that it had been shipped by the Electrovida Co. from Redwood City, Calif., on or about December 3, 1940; and charging that it was misbranded.

Analysis of a sample of the article showed that it consisted essentially of lime water containing traces of sulfates and chlorides and a small amount of potassium iodide.

The article was alleged to be misbranded: (1) In that the combination of letters "Elsaco," appearing on the bottle label, constituted a false and misleading device since as a result of statements in a leaflet entitled "Elsaco Mineralized Water A Biologically Pure Mineral Water," which had been shipped by the Electrovida Co. on or about August 10, 1940, and was distributed by one of its agents, the said combination of letters meant to purchasers that the article was an appropriate and effective treatment for run-down, nervous condition, arthritis, swollen, stiff and painful joints, gall-bladder trouble, headaches, nervousness, mucous colitis, ulcer of the stomach, neuritis, stomach and kidney trouble, sinus trouble, toxic diseases, severe intestinal trouble, nerve trouble, rheumatism, eczema, pleurisy, varicose veins, asthma, chronic fistula, ulcerated colitis, anemia, gallstones, tumors, weak eyes, hemorrhages, and that it was "one of the greatest means for the rebuilding of the body tissues, cell life, and blood that has yet been discovered"; whereas it was not an appropriate or effective remedy for the disease conditions listed nor was it a means of rebuilding the body tissue, cell life, and blood. (2) In that statements in the aforesaid circular were false and misleading as applied to an artificially prepared mineral water; the labeling failed to reveal that any treatment by electrolysis to which the water had been subjected had had any significant result on its therapeutic or curative effects, a fact material in the light of the statement that the article had been treated by electrolysis and that it contained electrically treated mineral elements; and that the article contained but inconsequential proportions, if any, of many of the elements listed.

On February 6, 1941, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

515. Misbranding of mineral water. U. S. v. 9 Bottles and 12 Bottles of McFadden 3 Sisters Springs Mineral Water. Default decree of condemnation and destruction. (F. D. C. No. 2814. Sample No. 15891-E.)

On September 13, 1940, the United States attorney for the Eastern District of Missouri filed a libel against 9 1-gallon bottles and 12 5-gallon bottles of mineral water at Flat River, Mo., alleging that the article had been shipped from McFadden 3 Sisters Springs, Hot Springs National Park, Ark., on or about August 8, 1940; and charging that it was misbranded.

Examination showed that the article contained calcium bicarbonate (2.77 grains per quart) and smaller proportions of other mineral constituents commonly found in ground waters.

The article was alleged to be misbranded in that statements in the labeling which represented and suggested that it was efficacious in the treatment of Bright's disease, diabetes, dropsy, pus in kidney, bladder and urethra, and other kidney, bladder, and urinary troubles, high and low blood pressure, enlarged prostate gland, paralysis, stones in kidney, and other urinary troubles, change of life, female irregularities, insomnia, anemia, nervous prostration, gout and hyperacidity; that this drug would be efficacious to maintain and restore health in apparently hopeless cases and to rejuvenate shattered nerves and weakened bodies; that it possessed the health giving properties implied in the statement "Fountains of Health"; that it was efficacious in advanced stages of kidney trouble, bladder and gall-stone misery, cystitis, rheumatism, arthritis, sciatica, diabetes, chronic constipation and resulting complications; that it would bring about renewed vitality and fitness; that it would be efficacious to help nature to discharge toxins which frequently cause serious ills and to flush out accumulated wastes which form poisons to attack the vital organs, the liver, kidney, and bladder; that it would be efficacious in cases of faulty elimination and poor assimilation; that it would assist nature in the cleansing of each tissue, nerve and muscle, thus enabling nature's recreating and rejuvenating forces to carry new life thereto; that said drug would be efficacious to control the changes in tissue which produce old age and infirmities and enable one to catch the rhythm of youth again; and that this drug would supply the minerals to keep the body tissues and fluids and organs in perfect running order, clarify the blood, promote physical repair, and eliminate waste, were false and misleading since the article would not be efficacious for such purposes.

On October 31, 1940, no claimant having appeared, judgment of condemnation was entered, and the product was ordered destroyed.

516. Misbranding of Thermo-Roller. U. S. v. 9 Retail Packages of Electrically Heated Thermo-Roller. Default decree of condemnation and destruction. (F. D. C. No. 1798. Sample No. 3021-E.)

This product was a device made in the form of a rolling pin covered with corrugated rubber and was electrically heated. Its labeling bore false and misleading representations regarding its efficacy as a reducing agent and in the treatment of certain diseases.

On April 11, 1940, the United States attorney for the Western District of Pennsylvania filed a libel against 9 packages of the above-named product at Pittsburgh, Pa., alleging that the article had been shipped in interstate commerce on or about February 24, 1940, by the Thermo-Roller Corporation from New York, N. Y.; and charging that it was misbranded.

The article was alleged to be misbranded in that representations in the labeling that it would enable one to achieve a completely balanced figure without special effort by concentrating on the spot or area most out of proportion; that it would be efficacious to reduce the abdomen, hips, thighs and "dowager's hump" between the shoulders and remove localized deposits of fat; that it was efficacious in reducing excessive external fat; it would be efficacious in eliminating fat cell elements; and that it would be beneficial in the treatment of sciatica, rheumatism, arthritis, lumbago and other common nervous disorders were false and misleading since the article would not be efficacious for such purposes.

On May 6, 1941, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

517. Misbranding of Axine Plates. U. S. v. 50 Pairs of Axine Plates (and 3 other seizures of Axine Plates). Default decrees ordering that the product be destroyed. (F. D. C. Nos. 3430, 3615, 3799, 4085. Sample Nos. 35471-E, 37110-E, 43164-E, 57237-E.)

Between November 27, 1940, and March 22, 1941, the United States attorneys for the Middle District of Tennessee, Western District of Oklahoma, and the Southern District of Texas filed libels against 50 pairs of Axine Plates at Nashville, Tenn., 18 pairs at Pearson, Okla., and 12 pairs at Houston, Tex., alleging that the article had been shipped on or about July 9, 1939, and July 12 and 27, 1940, by W. Gordon Pervis from Tennille, Ga.; and charging that it was misbranded. On April 1, 1941, the United States attorney for the Eastern District of Illinois filed a libel against 79 Axine Plates at West Frankfort, Ill., which had been consigned by W. Gordon Pervis, alleging that the article had been shipped from Tennille, Ga., on or about December 13, 1938; and charging that it was misbranded.

Examination showed that each of these devices consisted of two metal plates, one made of copper and the other of zinc, which were to be worn in the shoes of the user, a plate in each shoe.